IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

WP(C).No. 26453 of 2007(Y)

PETITIONER:

M.V.RAGHAVAN,
MELATH VEETTIL,
BURNASSERRY, KANNUR.

BY ADV. SRI.B.S.SWATHY KUMAR

RESPONDENTS:

---

1. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
THIRUVANANTHAPURAM.

2. THE ADMINISTRATORS OF THE KERALA STATE
CO-OP. HOSPITAL COMPLEX AND CENTRE FOR ADVANCED
MEDICAL SERVICES LTD. NO.4386, PARIYARAM,
KANNUR, REPRESENTED BY ITS CONVENOR.

3. THE RETURNING OFFICER,
KERALA STATE CO-OP. HOSPITAL COMPLEX AND CENTRE
FOR ADVANCED MEDICAL SERVICES LTD. NO.4386,
ASSISTANT REGISTRAR(PLANNING),
JOINT REGISTRAR(GENERAL) OFFICE, KANNUR.

BY ADV. SRI.P.V.SURENDRANATH
SRI.P.V.DIPU
GOVT.PLEADER SMT.ANU SIVARAMAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. M. JOSEPH, J.

W.P.C. NO. 26453 OF 2007

Dated this the 10th day of September, 2007

JUDGMENT

Writ petition is filed seeking a direction to quash that part of Ext.P4 fixing the venue of the election at Cheruthazham Government Higher Secondary School (including that part of the resolution fixing the venue for the election). Mandamus is sought commanding the second respondent to pass a fresh resolution fixing the venue of the election on 23-09-2007 either at Thiruvanathapuram or at Thrissur. Further direction is sought to the first respondent to re-notify fixing the venue of election either at Thiruvananthapuram or at Thrissur and direct the third respondent to conduct the election at the venue as notified. A declaration is also sought that part of the resolution fixing the venue of the election at Cheruthazham school and Ext.P4 notification issued on its basis is illegal, vitiated with ulterior motives and hence legally unsustainable.

Case of the petitioner in brief is as follows:

Petitioner is the former elected Chairman of the Board of

Directors of the Kerala State Co-op. Hospital Complex and Centre for Advanced Medical Services. Term of the Board expired on 11-07-07. It is stated that though two resolutions were taken to conduct the election the first respondent did not appoint the returning officer and cancelled the resolutions. There was a legal action taken and finally the matter reached the Apex Court which vide order dated 17-08-07 in S.L.P.(Civil)No.S 13585/07 directed the second respondent to hold the election within six weeks. There is a case that the action of the first respondent is vitiated by malafides and political dictates. The present complaint is against Ext.P4 as per which the first respondent has notified the election at Cheruthazham school. It is stated that it is situated at a remote place where there is no bus service or other convenient form of conveyance. It is the case of the petitioner that it is purposefully fixed so that voters who come from all parts of the State find it impossible to reach and the school is situated in a area which is a stronghold of the Marxist party. Petitioner submitted Ext.P2 representation before the first respondent and Ext.P3 before the Chairman of the second respondent. It is the case of the petitioner that resolution fixing venue is vitiated with ulterior motives and

political dictates and with sole intention to see that fair and proper election does not take place and voters do not reach the venue. It is stated that fixing of venue in Ext.P4 is to be set aside and the first respondent directed to conduct the election either at Thiruvananthapuram where the earlier election was conducted or at Thrissur which is the central point of the State of Kerala. It is stated that it is beyond human logic to conduct the election to the Board of a Society having State wide jurisdiction whose members hail from every part of the State, at a remote hilly area where there is no bus service or other forms of conveyance. It is stated that the sequence of events and the illegal acts resorted to oust the board would show that the illegal events that took place in various elections held at their stronghold will be repeated. It is stated that by using threat and muscle power the voters will be restrained from reaching the venue.

Counter affidavit is filed on behalf of the second respondent. Therein it is interalia stated as follows. The Cheruthazham Higher Secondary School is situated just 2.5 k.m. away from the head office of the society. There are three roads to reach the school at Cheruthazham and having adequate/sufficient bus services to this place and having a good road. It is stated that Administrators are

District Collector, Kannur, Additional Registrar of Co-operative Societies and the Principal of the Medical College, Calicut. They have no political interest at all in administering the affairs of the society and conducting election to the managing committee of the society. It is stated that the second respondent is empowered and duty bound to fix the date, time and venue of election to the society. Returning officer has taken necessary steps for the conduct of election and the Administrator shall render all necessary help to the Returning Officer for the Constitutional committee after smooth conduct of election in a free and fair manner. It is stated that it is not practicable or feasible to conduct election far away from the Head office of the society, as the society has to take all admission registers, identity cards, issue registers , voters list and society staffs and department staffs to that far way district. It is stated that out of 484 individual members more than 300 voters are from Kannur district. It is stated that the District Collector being the chairman of the Administrators he has got all the authority and power to deal with any situation and nobody would be permitted to use muscle power to prevent voters from reaching the venue.

2. I heard learned counsel for the petitioner Sri.Swathy

Kumar and learned counsel for the respondents 2 and 3 Sri.P.V.Surendranath besides the learned Government Pleader.

3. Petitioner would reiterate the contentions in the writ petition. He would further submit that if the election could not be held at Thiruvananthapuram or Thrissur, there are several place in Kannur town itself where election could be held. They include St.Michels High School, Kannur, Govt. Municipal Vocational Higher Secondary School (Sports), Kannur, Govt.Training School, Kannur, Govt.Town School, Kannur , Govt. Girls High School, Payyambalam, City Govt. High School, Kannur. Besides this he would also submit that at any rate election could be held at head quarters where the building has nearly 12 lakhs carpet area and there is an auditorium in the head quarters where election can be held. He would submit that if the election is to be held at a venue in Ext.P4, the spirit of democracy and the co-operative movement will suffer and the members will not be able to exercise their franchise in a free and fair manner without fear.

4. On the other hand, Sri.P.V.Surendranath reiterated the contentions in the counter affidavit. Regarding the alternate places, he would submit that alternate places suggested are more than

30 Kms away from the head quarters. Regarding the head quarters, it is submitted that there is a medical college and it may not be possible to conduct election therein.

I do not think that the petitioner has made out a case for interference in the state of pleadings. Admittedly going by the pleadings as they stand (no reply affidavit has been filed to the counter affidavit), it has to be taken that the venue proposed is located 2.5k.m. away from the head quarters. There are three roads and it must be taken that there are adequate bus services for the voters to reach the venue. Nearly 300 out of 484 individual members belong to Kannur. Therefore the request to have the election held at Thiruvananthapuram or even at Thrissur may not be acceptable. At any rate the decision taken by the administrators who are in the place of the managing committee under Rule 35 cannot be said to be so perverse or so unfair as to warrant interference under Article 226. The fact that the election was earlier held at Thiruvananthapuram does not render the decision of the second respondent to conduct election at a place which is near to the head quarters unfair. In such circumstances I do not think that petitioner has made out a case for interference. I cannot overlook the fact that

the committee has the District Collector, the Principal of the Medical College, Calicut besides the Additional Registrar as its members. I do not think that petitioner has established a case of malafides as such also. I do not think that the case set up by the petitioner that the venue is liable to be interfered with on the basis that it is located in a stronghold of the Marxist party is liable to be accepted. Writ petition fails and it is dismissed.

K. M. JOSEPH, JUDGE

sv.